

AMENDED IN SENATE JUNE 30, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1404**

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**Introduced by Assembly Members De Leon, Carter, and  
V. Manuel Perez  
(Coauthor: Assembly Member Hill)**

February 27, 2009

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An act to amend Section 38505 of, and to add Section 38573 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1404, as amended, De Leon. California Global Warming Solutions Act of 2006: offsets.

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. The act authorizes the state board to adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to the act. The fee revenues are deposited into the Air Pollution Control Fund and are available, upon appropriation by the Legislature, for purposes of carrying out the act.

The state board is authorized to adopt market-based compliance mechanisms, as defined, meeting specified requirements to be used for compliance with those regulations. The state board is required, before including any market-based compliance mechanism, to maximize additional environmental and economic benefits for California, as appropriate.

This bill would require the state board, if the state board allows the use of market-based compliance mechanisms, to limit the use of compliance offsets, as defined, that meet specific criteria, to no more than 10% of the greenhouse gas emission reductions expected from market mechanisms during the compliance period. The bill would require the state board to apply the limit as a percentage of each regulated party's reported emissions in a compliance period. The bill would require the state board to impose a fee pursuant to the fee authority described above for deposit into the fund to pay for expenses related to state board administration of the compliance offset program, upon appropriation by the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 38505 of the Health and Safety Code is  
2     amended to read:  
3     38505. For the purposes of this division, the following terms  
4     have the following meanings:  
5     (a) "Allowance" means an authorization to emit, during a  
6     specified year, up to one ton of carbon dioxide equivalent.  
7     (b) "Alternative compliance mechanism" means an action  
8     undertaken by a greenhouse gas emission source that achieves the  
9     equivalent reduction of greenhouse gas emissions over the same  
10    time period as a direct emission reduction, and that is approved  
11    by the state board. "Alternative compliance mechanism" includes,  
12    but is not limited to, a flexible compliance schedule, alternative  
13    control technology, a process change, or a product substitution.  
14    (c) "Carbon dioxide equivalent" means the amount of carbon  
15    dioxide by weight that would produce the same global warming  
16    impact as a given weight of another greenhouse gas, based on the  
17    best available science, including from the Intergovernmental Panel  
18    on Climate Change.

1 (d) “Cost-effective” or “cost-effectiveness” means the cost per  
2 unit of reduced emissions of greenhouse gases adjusted for its  
3 global warming potential.

4 (e) “Compliance offset” means ~~the quantified reduction of~~  
5 ~~greenhouse gas emissions used as a substitute for direct compliance~~  
6 ~~with a greenhouse gas reduction regulation or market mechanism.~~  
7 ~~A compliance offset is based on emission reductions occurring~~  
8 ~~outside of the sector or sectors covered by the greenhouse gas~~  
9 ~~regulation.~~ *a quantified reduction in emissions of greenhouse gases*  
10 *in a sector different than the sector or sectors regulated by a*  
11 *greenhouse gas emission limit for which a market-based*  
12 *compliance mechanism has been adopted by the state board, that*  
13 *is used for compliance of that greenhouse gas emission limit by a*  
14 *greenhouse gas emission source regulated by that limit.*

15 (f) “Direct emission reduction” means a greenhouse gas emission  
16 reduction action made by a greenhouse gas emission source at that  
17 source.

18 (g) “Emissions reduction measure” means programs, measures,  
19 standards, and alternative compliance mechanisms authorized  
20 pursuant to this division, applicable to sources or categories of  
21 sources, that are designed to reduce emissions of greenhouse gases.

22 (h) “Greenhouse gas” or “greenhouse gases” includes all of the  
23 following gases: carbon dioxide, methane, nitrous oxide,  
24 hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

25 (i) “Greenhouse gas emissions limit” means an authorization,  
26 during a specified year, to emit up to a level of greenhouse gases  
27 specified by the state board, expressed in tons of carbon dioxide  
28 equivalents.

29 (j) “Greenhouse gas emission source” or “source” means any  
30 source, or category of sources, of greenhouse gas emissions whose  
31 emissions are at a level of significance, as determined by the state  
32 board, that its participation in the program established under this  
33 division will enable the state board to effectively reduce greenhouse  
34 gas emissions and monitor compliance with the statewide  
35 greenhouse gas emissions limit.

36 (k) “Leakage” means a reduction in emissions of greenhouse  
37 gases within the state that is offset by an increase in emissions of  
38 greenhouse gases outside the state.

39 (l) “Market-based compliance mechanism” means either of the  
40 following:

1 (1) A system of market-based declining annual aggregate  
2 emissions limitations for sources or categories of sources that emit  
3 greenhouse gases.

4 (2) Greenhouse gas emissions exchanges, banking, credits, and  
5 other transactions, governed by rules and protocols established by  
6 the state board, that result in the same greenhouse gas emission  
7 reduction, over the same time period, as direct compliance with a  
8 greenhouse gas emission limit or emission reduction measure  
9 adopted by the state board pursuant to this division.

10 (m) “State board” means the State Air Resources Board.

11 (n) “Statewide greenhouse gas emissions” means the total annual  
12 emissions of greenhouse gases in the state, including all emissions  
13 of greenhouse gases from the generation of electricity delivered  
14 to and consumed in California, accounting for transmission and  
15 distribution line losses, whether the electricity is generated in state  
16 or imported. Statewide emissions shall be expressed in tons of  
17 carbon dioxide equivalents.

18 (o) “Statewide greenhouse gas emissions limit” or “statewide  
19 emissions limit” means the maximum allowable level of statewide  
20 greenhouse gas emissions in 2020, as determined by the state board  
21 pursuant to Part 3 (commencing with Section 38550).

22 SEC. 2. Section 38573 is added to the Health and Safety Code,  
23 to read:

24 38573. If the state board allows the use of market-based  
25 compliance mechanisms pursuant to Section 38570, all of the  
26 following shall apply:

27 (a) The state board shall limit the use of compliance offsets  
28 within a compliance period to no more than 10 percent of the  
29 greenhouse gas emission reductions expected from market  
30 mechanisms during that compliance period. The state board shall  
31 apply the limit as a percentage of each regulated party’s reported  
32 emissions in a compliance period.

33 (b) The state board shall approve compliance offsets only if  
34 those compliance offsets meet all of the following criteria:

35 (1) The compliance offset has been verified by an independent,  
36 third-party verifier who has been certified and assigned by the  
37 state board.

38 (2) The independent verifier has certified that the emission  
39 reductions represented by the compliance offset meets the  
40 requirements of a protocol adopted by the state board. ~~Protocols~~

1 ~~shall be developed to meet the requirements of paragraph (1) of~~  
2 ~~subdivision (d) of Section 38562.~~

3 (3) The compliance offset is entered into a tracking system  
4 developed or designated by the state board and assigned a unique  
5 serial number.

6 (4) The compliance offset is permanently retired and the  
7 emission reductions represented by the compliance offset have not  
8 been claimed by any other entity.

9 (5) The compliance offset shall not cause or contribute to  
10 significant adverse effects on human health or the environment as  
11 determined by the state board.

12 (6) ~~The compliance offset is not a certified emission reduction~~  
13 ~~credit developed as part of~~ *created from a project registered in*  
14 *the Kyoto Protocol's Clean Development Mechanism registry.*

15 (c) Compliance offsets shall meet the requirements for emission  
16 reductions in Section 38562. *The state board may adopt*  
17 *requirements in addition to the requirements of this section for*  
18 *compliance offsets.*

19 (d) Subject to subdivision (a), the state board shall establish  
20 incentives or guidelines that prioritize the use of compliance offsets  
21 in the following order:

22 (1) Compliance offsets that result in air quality benefits to  
23 California communities disproportionately impacted by air  
24 pollution, as determined by the state board. *The state board shall*  
25 *identify communities disproportionately impacted by air pollution,*  
26 *in consultation with air pollution control districts and air quality*  
27 *management districts and other stakeholders.* A preference shall  
28 be made for compliance offsets that benefit air quality in the same  
29 air pollution control district or air quality management district  
30 where the regulated party claiming the offset credit is located.

31 (2) Compliance offsets that comply with Section 38565.

32 (3) Compliance offsets that result in cobenefits to public health  
33 and the environment anywhere in the state.

34 (e) The state board shall impose a fee pursuant to Section 38597,  
35 the revenues of which shall be placed into the Air Pollution Control  
36 Fund and shall be available, upon appropriation by the Legislature,  
37 to pay for expenses related to state board administration of the

- 1 compliance offset program. General Fund moneys shall not be
- 2 expended for the administration of the compliance offset program.

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